

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

UNITED STATES OF AMERICA : **CRIMINAL NO. 1:04-CR-0069**
:
v. : **(Judge Conner)**
:
TRINA SMITH :

AMENDING ORDER

AND NOW, this 3rd day of November, 2008, upon consideration of the memorandum and order of court (Doc. 99) dated June 25, 2008, and of defendant's letter dated October 18, 2008, which (1) contends that the memorandum mistakenly concludes that the presentence report assigned no criminal history points to three of defendant's prior convictions for failure to file income taxes¹ and (2) requests "a general motion document . . . [to] allow[] me to . . . [request] a sentence reduction in light of the Second Chance Act" of 2007, Pub. L. No. 110-199, 122 Stat. 657 (2008), and, after review of the presentence report prepared in this matter, it appearing

¹The memorandum stated:

Defendant also claims that the court erroneously relied on three of her prior convictions for failure to file earned income taxes when evaluating her career offender status because there were "no court proceedings" associated with these offenses. (Doc. 81 at 3, 6.) The presentence report, however, indicates that these charges were assigned docket numbers and resulted in convictions and fines. Defendant has provided no evidence to the contrary. In any event, these offenses were assigned no criminal history points and therefore have no bearing on defendant's career offender status. See U.S. SENTENCING GUIDELINES MANUAL § 4B1.1 (2004) (counting only prior felony convictions for crimes of violence or controlled substance offenses).

(Doc. 99 at 8 n.7.)

that one criminal history point was, in fact, assigned to each of defendant's three tax convictions, and that the resulting criminal history points do not affect defendant's sentence or Sentencing Guidelines range because they have no bearing on her career offender status, See U.S. SENTENCING GUIDELINES MANUAL § 4B1.1 (2004) (counting only prior felony convictions for crimes of violence or controlled substance offenses when assessing a defendant's status as a career offender), and the court having previously concluded that defendant was properly adjudicated a career offender based upon her 1988 and 1992 controlled substance offenses, (see Doc. 99 at 4-8), it is hereby ORDERED that:

1. The Clerk of Court is instructed to docket defendant's letter dated October 18, 2008.
2. The memorandum (Doc. 99) dated June 25, 2008 is AMENDED by deleting the sentence that begins in the sixth line of footnote 7 on page 8, which reads as follows: "In any event, these offenses were assigned no criminal history points and therefore have no bearing on defendant's career offender status." This language is replaced with the following sentence: "In any event, these offenses have no bearing on defendant's career offender status and therefore do not affect the propriety of her sentence." See FED. R. CRIM. P. 36 (stating that a court may amend any "judgment, order, or other part of the record" to correct clerical error); R. GOVERNING § 2255 CASES 12 (stating that a court may apply the Federal Rules of Criminal Procedure to a motion under § 2255).

3. The Clerk of Court is instructed to transmit to defendant blank copies of the standard forms used to challenge incarceration under 28 U.S.C. § 2255 and 28 U.S.C. § 2241.² Defendant may raise her argument under the Second Chance Act of 2007 in accordance with any substantive law supporting her claim and through any procedure she contends is appropriate under the circumstances.

S/ Christopher C. Conner
CHRISTOPHER C. CONNER
United States District Judge

²The court provides these forms solely as a courtesy to defendant at her request. The transmission of the forms does not reflect an opinion by the court regarding how defendant should proceed with her claim under the Second Chance Act, nor does it constitute a ruling by the court regarding the merits thereof. The court cannot provide legal advice to *pro se* defendant, who must make strategic decisions regarding how to assert her claim for relief independently of the court. See United States v. Perry, 142 F. App'x 610, 612 (3d Cir. 2005) ("[T]here is no general requirement for a District Court to provide information or legal advice to *pro se* litigants who seek post-conviction relief.").